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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/563,393

04/28/2006

Klaus Worgull

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7590

03/03/2008

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EXAMINER

DEFRANK, JOSEPH S

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

03/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,393	Applicant(s) WORGULL ET AL.	
	Examiner JOSEPH DEFRANK	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1-5-06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features of claims 10-13 must be shown, specifically multiple guides (claim 10) with each guide having differing characteristics (claims 11-13) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. **It is important that the abstract not exceed 150 words in length** since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it contains legal phraseology such as "said." The abstract is also objected to because it is too long. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

4. Claim 11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, because the wording of the claim is very confusing and contradictory. The tine slot widths cannot be "different but the same as each other." Examiner is unclear if each separate guide has the same spacing, but when compared to a different guide, has different spacing; or if

each individual guide has different spacing within its own tines, but the spacing is identical for multiple guides. Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 10, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Fewins (US Patent 2,481,097).

8. With respect to claim 1, Fewins discloses a thinning tool (8) for an electric hair clipper (A), which has a lower shearing blade and an upper shearing blade (B, C), each with a respective row of teeth, that the upper shearing blade (C) is swingable back and forth parallel to the rows of teeth, and the thinning tool (8) is embodied as placeable on the lower blade (B), characterized in that the thinning tool (8) is provided with a row of tines (9), which forms an extension of teeth of the row of teeth of the lower shearing blade (B); that the row of tines (9) is provided with tine slots; that the tine slots are provided on the free end with a conical enlargement (see figure 2) for catching and guiding hairs; and that the tine slots toward the shearing blades have at least a width of the diameter of a hair, for carrying the hair to the shearing blades (B, C).

9. With respect to claims 10, 12, and 13, Fewins discloses a second guard usable with the clipper (figure 7) which has different thinning characteristics (column 4 lines 20-

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28). The second guard has a width of tine slots that is different than the first. Since every other tooth is removed, the guard also has a different number of tines when compared to the first guard (of figure 1). Examiner also notes that he himself owns a haircut kit which contains an electric shear and multiple comb guides with each guide having a different cutting characteristic. This concept is old and well known in the art.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 2-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fewins (2,481,097).

Fewins discloses the thinning tool of claim 1, but does not specifically disclose the dimensions pertaining to the tine slots of the thinning tool. Fewins does not disclose the time slot being provided with a width in the range of 0.2 to 1.0mm nor approximately 0.3mm. Fewins does not disclose the time slot provided with a height in the range of 1 to 2mm, nor approximately 1.5mm. Fewins does not disclose the conical enlargement having a height of approximately 3mm. Fewins does not disclose the conical enlargement having a width on the free end of approximately 2mm. Fewins does not disclose the thinning tool where the row of times is provided with tines which are spaced apart in the range of 3 to 8mm, nor approximately 4mm. Examiner notes that Fewins does disclose that the teeth can be spaced out in any manner which provides the desired hair cutting characteristics (column 2, line 45 through column 3, line 2).

With respect to each dimension, examiner also notes that there is a very limited range of dimensions the can be applied to combs for electric hair clippers. The comb can only be as wide as the clipper and provide a tine slot width no more narrow than the width of a single hair. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the comb of Fewins in order to provide a tine slot width of approximately 0.3mm, a tine slot height of approximately 1.5mm, a

conical enlargement height of approximately 3mm, a conical enlargement width of approximately 2mm, and a tine spacing of approximately 4mm, for the purpose of facilitating different style hair cuts, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Examiner notes that the aforementioned limitations would have been obvious because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely that the product is not of innovation but of ordinary skill and common sense.

14. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fewins (US Patent 2,481,097).

Fewins discloses multiple blade guards but does not disclose each thinning tool being provided with a width of tine slots that is different throughout the single guard. Fewins does, however, disclose that there are many known configurations of tine spacing for guards and that the tines may be spaced in any suitable manner to achieve any type of haircut characteristic (column 2, line 45 through column 3, line 2). It would have been an obvious matter of design choice to make the different portions of the guard of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide different guards having tines slots with any width configuration regardless of

what the other guards have in order to achieve a specific thinning characteristic.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art of Giorgi, Chaouachi et al., Melton et al., and Melton are noted as considered pertinent to the applicant's disclosure. Also, the art of the Remington HC600 haircut kit discloses a commonly distributed product having multiple guards with different tine setups.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH DEFRANK whose telephone number is (571)270-3512. The examiner can normally be reached on Monday - Thursday; 9am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joseph De Frank
Examiner
Art Unit 3724

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2-20-08
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